

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

LESTER JON RUSTON, )  
Petitioner, )  
v. ) Civil Action  
UNITED STATES BUREAU OF PRISONS, ) No. 05-3268-CV-S-RED-H  
et al., )  
Respondents. )

**ORDER AND JUDGMENT**

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the Magistrate in which he continues to challenge the constitutionality of his prior conviction, which was imposed in Texas.

Having fully reviewed the record de novo, the Court agrees with the Magistrate that the petition should be dismissed. Regardless of petitioner's assertions, it is clear that this Court lacks jurisdiction to entertain his claims. It appears that petitioner is challenging a state conviction, which challenge would be properly brought under the provisions of 28 U.S.C. § 2254.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions

of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore ORDERED that petitioner's exceptions filed herein be, and they are hereby, considered and overruled. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis.

It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Richard E. Dorr  
RICHARD E. DORR  
United States District Judge

Date: December 9, 2005